IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16-2-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.9605 of 1998

R. Ramakrishnan ... Petitioner

Vs.

1. State of Tamil Nadu,
rep.by Secretary to Government,
Adi Dravidar Welfare Department,
Chennai - 600 009.

2. The District Collector,
Madurai.

3. The Special tahsildar,
Adi Dravidar Welfare Alagu-2,
Madurai-20. ... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India, praying this Court to issue a writ of certiorari calling for the records in Na.Ka.No.134039/97 dated 2.12.1997, published in the Madurai District Gazette, dated 8.12.1997 on the file of the second respondent pertaining to Aayithimpatti Village in the respective lands comprised in S.No.40, Patta No.56, and quash the same.

For Petititioner : Mr.S.Desikan

For Respondents : Mr.P.Subramanian,
Government Advocate

O R D E R

Prayer in the writ petition is to quash the land acquisition notification issued under section 4(1) of the 1978 Act dated 2.12.1997 published in the Madurai district Gazettee dated 8.12.1997.

2. The brief facts necessary for disposal of the writ petition are as follows.

(a) Petitioner purchased agricultural lands to an extent of 9.72 acres in S.No.40 in Ayattampalli Village, Madurai District, by registered sale deed dated 26.11.1976 and the said land is an agricultural land. According to the petitioner, as Kartha of the Joint family, he obtained

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loan from the Melur Co-Operative Land Development Bank Limited in the year 1978 for digging well for irrigation purposes and the entire loan was repaid. The extent of the land being small, petitioner is treated as small farmer by the Government of Tamil nadu.

(b) The third respondent issued notice on 7.11.1997 under rule 3(1) and Section 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Act 31 of 1978) intending to acquire 0.90.0 Hectares of land of the petitioner in the said survey No.40 and the same was received by the petitioner on 1.12.1997. In the said notice, it was stated that objections if any, should be furnished on 1.12.1997 at 3.30 p.m. According to the petitioner, he received the said notice at 4.30 p.m. on 1.12.1997 and immediately he rushed to the office of the third respondent and submitted objections and prayed for dropping the acquisition proceedings on the ground that the petitioner and his family members have no other land for their livelihood and they are treated as small farmers doing cultivation in the said lands and he is unemployed.

(c) Petitioner states that after receipt of the said objection, the third respondent informed that fresh date of enquiry will be intimated and the petitioner will be heard in person on the basis of the objection filed on 1.12.1997. Thereafter petitioner received notice issued under Section 5 (1) for fixing compensation amount, for which enquiry was proposed to be conducted on 10.2.1998. In the said enquiry also petitioner objected the acquisition of land in question and at that time petitioner was informed that the acquisition proceedings were completed and the notification under section 4(1) is published in the District Gazettee on 8.12.1997.

(d) Thereafter, petitioner searched for the Gazettee notification and he could get the same only during the first week of July, 1998, and the same is challenged in this writ petition contending that the respondents finalised the proceeding by issuing Gazettee notification without holding any enquiry or opportunity of hearing to the petitioner and the notice fixing enquiry on 1.12.1997 at 3.30 p.m. was received by the petitioner only on 1.12.1997 at 4.30 p.m. and immediately petitioner rushed to the office of the third respondent and submitted his objection and the same is not considered and the acquisition was finalised on the very next day i.e., on 2.12.1997 itself. Therefore, according to the petitioner, the respondents were in pre-determined mind and without considering the objections, petitioner's land is sought to be acquired through the impugned order.

3. The respondents filed counter affidavit wherein it is stated that Section 4(1) notification was published in Madurai District Gazettee on 8.12.1997 relating to the petitioner's land, after the same was approved by the second respondent on 2.12.1997. It is further stated that Section 4(2) notice was issued by the proceedings of the third respondent dated 7.11.1997 and the notice was affixed on the door of the house of the petitioner as he was out of station. It is also stated that no objection was given by the petitioner as stated in the affidavit and the notice

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could not be served on the petitioner as he was not available and therefore he could not be enquired. Since no objection was received from the petitioner, the acquisition was finalised and gazettee notification was issued under section 4(1) of the Act 31 of 1978.

4. The learned counsel for the petitioner argued that the third respondent failed to follow the mandatory provisions contained in Section 4(2) of the Act by serving notice on the petitioner and the third respondent without resorting to serve the notice either on the petitioner personally or on any member of the petitioner's family, resorted to affix the notice as stated in the counter affidavit without mentioning the date when the affixture was made. The learned counsel also argued that the petitioner came to know of the enquiry at about 4.30 p.m. on 1.12.1997 and immediately rushed to the office of the third respondent and submitted his objection, which is said to be not received by the third respondent in the counter affidavit and based on the averments in the counter affidavit that no objection from the petitioner having been received, the land of the petitioner was acquired by issuing notification under section 4(1) of the Act. Learned counsel therefore contended that the petitioner having submitted the objection, it is incumbent on the third respondent to conduct enquiry and send a report with his remarks to the second respondent and failure to follow the said mandatory procedure vitiates the entire proceeding.

5. The learned counsel for the respondents argued that since the petitioner was not available in his house to serve notice under section 4 (2) personally, the notice was affixed on the door of the petitioner's house and hence he could not be enquired in the matter. Petitioner also failed to submit any objection for the proposed acquisition and therefore the respondents are right in issuing notice under section 4(1) under Act 31 of 1978.

6. I have considered the submissions made by the learned counsel for the petitioner and also the learned Government Advocate, who also produced the file in respect of the acquisition of petitioner's land.

7. The point in issue is whether the third respondent is right in serving the notice by affixture of notice on the door of the house of the petitioner on the ground that the petitioner was out of station and after receiving objections on 1.12.1997, whether the third respondent can say in the counter that objection having not been received, no enquiry was conducted and whether the second respondent recorded his satisfaction before issuing 4(1) publication.

8. Nowhere in the counter affidavit it is stated that Section 4(2) notice dated 7.11.1997 was attempted to be served personally to the petitioner or to any of the adult male member of the family at any time. On the contrary, a mere statement is made that when the notice was attempted to be served, petitioner was out of station and hence the notice was affixed on the door of the petitioner's house. The file maintained by

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the third respondent also do not disclose the attempt made by the third respondent or the Village Administrative Officer to serve notice personally on the petitioner or on any member of the petitioner's family even though an endorsement is made by the Village Administrative Officer that at the time when attempt was made to serve notice, petitioner was out of station and notice was affixed on the door of the petitioner's house. I could also see that in the said endorsement, made by the Village Administrative Officer, no date is mentioned.

9. It is the specific case of the petitioner that the proposed acquisition came to the knowledge of the petitioner on 1.12.1997 at 4.30 p.m. and immediately he rushed to the office of the third respondent and submitted his objection for the proposed acquisition. In the counter affidavit the third respondent states that no objection was received from the petitioner and therefore he was not enquired into. The relevant portion of the counter affidavit in para 4 reads as follows,

> "4. It is submitted that the contention is baseless since 3(1) notice was issued in this Office Roc.1571/97 dated 7.11.97. However, the Notice was affixed on the door of his house, as he was out of station. Hence, he could not be enquired in the matter.
>
> As regard para 2 and 3 it is submitted the no objectin was given by the petitioner as stated in the writ petition as already stated in the para 2, the 3(1) Notice could not be served on the petitioner as he was not available. Hence, he could not be enquired."

10. From the file produced by the third respondent it is seen at page 7 that petitioner gave objection on 1.12.1997 stating that from the income derived from the said lands, he is meeting his livelihood and if the lands are acquired, he will be greatly prejudiced. It is also recorded in the file at page 5 that the land owner agreed to remove the palmairah trees. After noting so, the third respondent in cyclo-styled form stated that the petitioner's objection is not acceptable and recommended to reject the objection by the second respondent pursuant to which second respondent approved on 2.12.1997 and issued notification under section 4(1) of the Act in the District Gazettee dated 8.12.1997. The said stand taken by the third respondent in the counter is totally contra to the file produced before this Court.

11. The counter affidavit is sworn to by the third respondent on 26.2.2002 wherein the third respondent specifically states that no objection was received from the petitioner and no enquiry was conducted due to non-receipt of objection. The said stand, in fact supports the case of the petitioner that the second respondent has issued the notification under section 4(1) totally on non-application of mind and the stand of the third respondent is inconsistent. Petitioner having objected the proposed land acquisition proceedings, as could be seen from the file by submitting a representation on 1.12.1997, the third respondent ought to

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have conducted enquiry and heard his objections. On the contrary, the third respondent has chosen to simply reject the claim made by the petitioner and submitted papers to the second respondent, who in turn not recording his satisfaction, approved it on 2.12.1997. Hence the procedures followed are in violation of the principles of Natural Justice. In the file the second respondent not only recorded his satisfaction but also there is no proof that the report of the third respondent was served on the petitioner.

12. Full Bench of this Court in the decision resported in 2006 (4) CTC 609 (R.Pari v. The Special Tahsildar, Adi Dravidar Welfare, Devakkottai) considered the above aspect and in para 18 held thus,

> "18. Under the State Act, the statutory provisions in the shape of Section 4 and Rule 3 are silent regarding holding of any enquiry (either by the District Collector or by the authorised officer). The statutory provisions merely contemplate issuance of notice to show cause and the Rules only contemplate issuance of notice in Form I. However, such Form I specifically contemplates "the statement of objections, if any," received within the time stipulated will be enquired into "at a particular place" on "a particular date" at the office of "a particular officer", to be specified in such notice. The Form-I further contemplates that the person interested is at liberty to appear and to adduce any oral and documentary evidence in support of his objection. It is no doubt true that such a notice in the statutorily prescribed form can be considered as part of the Rules. However, the procedure to be followed by the authorised officer is not specifically laid down, save and except as contained in Section 4(3)(b). This clause only contemplates that the officer authorised shall make report to the District Collector containing his recommendations on the cause so shown for the decision of the District Collector. It further contemplates that the District Collector may pass such orders as he may deem fit after considering such report. The provisions contained in the Act, the Rules or in Form-I do not specifically envisage as to which record will be placed before the District Collector. Similarly the provisions are silent as to whether the copy of report of the authorised officer is required to be furnished to the objectors. The principles of natural justice regarding furnishing of copy of report can be considered as super added to such provisions. It cannot be said that merely because the Form-I does not specifically prescribe any further opportunity, such opportunity is impliedly proscribed. Since the Central Act had specifically and in detail made certain

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provisions, it is reasonable to conclude that the Central Act has exhaustively laid down the manner in which and the extent of principles of natural justice is required to be complied with and impliedly excluded any other extension of principles of natural justice; whereas under the State Act the statutory provisions and the Rules being silent, the scope and extent of natural justice to be followed need not be confined to whatever has been described in the Form-I."

13. Further, there is also violation of the procedures contemplated in service of notice. Form-I issued under Rule 3(1) states that 15 days time should be given while serving notice for submitting objections. The mode of service of notice though not prescribed under the Act 31 of 1978 or the rules framed thereunder, section 45 of the Land Acquisition Act, 1894, states how notice to the land owners should be served. Under section 45(2) of the Central Act, it is stated that whenever it is practicable, the service of the notice shall be made on the person therein. Section 45(3) states that when such person cannot be found, the service may be made on any adult male member of his family residing with him and if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, etc. Hence it is clear that every attempt should be made to serve the notice in person against whom acquisition proceedings is initiated and if a person is not found, efforts should be made to serve the notice on any adult male member of the family and thereafter only affixture can be made. From the counter affidavit or from the file, it could be seen that such mandatory procedure is not followed. The above cited Full Bench decision clearly states that in the absence of a specific provision under the Act 31 of 1978, the other provisions contained in Act 1 of 1894 can be followed to comply with the principles of natural justice.

14. (a) The service of notice in land acquisition matters is considered by this Court in the decision reported in 1986 WLR 391 (Muthu v. The Government of Tamil Nadu) wherein in para 2 this Court held as follows,

"2. S.45 of the Act reads as follows-

"45(1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under S.4, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge:

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named;

(3) When such person cannot be found, the service

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may be made on any adult male member of his family residing with him, and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by affixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court house, and also in some conspicuous part of the land to be acquired;

Provided that, if the Collector of Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under S.28 and 29 of the Indian Post Office Act, 1898 and service of it may be proved by the production of the addressee's receipt."

It is not claimed that service by delivering or tendering the copy of the notice on the petitioner in person was attempted as contemplated under sub-S.(1) and (2) of S.45 of the Act. Sub-S(3) of S.45 of the Act contemplates and lays down other modes of service only when such person cannot be found. The service of any notice under the Act in the manner provided therein is a mandate of law, and the due procedure and modalities having been evolved, there cannot be a by passing of the same by the officials, and if they do so, they will be opening the gates for challenge of the proceedings as an illegality. It is not upto the officials to choose modes of service as suit them, if they do not conform to the statutory norms. As contemplated in sub-S(1) and (2) of S.45, service on the person concerned by delivering or tendering a copy of the notice shall be first attempted. Only when such service is not feasible, on the ground that such person cannot be found, the other modes of service as contemplated in sub-S.3 of S.45 should be resorted to. If the person cannot be found, service on an adult male member of the family should be attempted, and if no such adult male member can be found, then only service by affixture on the outer door of the house in which the person therein named ordinarily dwells or carries on business or by affixing a copy thereof in some conspicuous place in the office of the officer who signed the notice or in Collector's office or in the court house should be done. In such a case, in addition to the above modes, affixture of the copy of the notice in some conspicuous part of the land to be acquired should also be done. The proviso to sub-S.(3)

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says that the notice may, if the Collector or the Judge so directs, be sent by registered post in a letter addressed to the person named therein at his last known residence, address or place of business. It is not the case of the authorities that there was attempt to reach and serve the petitioner at his last known address. Equally so, service by post was also not resorted to. The set of expressions 'when such person cannot be found' occurring in sub-S(3) in the context caould mean only when such person cannot be found in the place where he ordinarily dwells or carries on business. Merely on the ground that such person is non-resident of the village, S.45(3) does not enable the authorities to resort to a mode of service by affixture in the land subject matter of acquisition."

(b) In the decision reportred in 1996 WLR 28 (N.Loganathan v. The Special Tahsildar, Adi Dravidar Welfare, Tiruvellore) how the notice should be served, is explained in para 5, which reads as follows,

"5. As rightly pointed out by the learned sounsel for the petitioner, the show cause notice required to be issued under S.4(2) read with R.3 is mandatory and therefore should be strictly complied with. R.3 as stated already requires individual notice to be served and every attempt has to be made to serve the show cause notice individually on the owner or the person interested and if for any reason, individual notice could not be served as the person cannot be found, the service may be made on any adult male member of his family residing with him and if no such adult male member is found, notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business."

In this case, the respondents failed to follow the said procedures.

(c) Rejection of objections in a cyclo-styled form is found bad by this Court in the decision reported in 2001 (3) CTC 649 (G.Ramakrishna Naidu v. District Collector, North Arcot Ambedkar District, Vellore) and in para 7 this Court held as under,

"7. It is not disputed that the impugned order of the District Collector is in a cyclostyled form merely states that the Collector, Vellore, North Arcot District had accepted the recommendations of the Tahsildar and directs that the objections of the landowners to the acquisition been over-ruled. The remaining text of the cyclostyled form is nothing but formal directions to the subordinates to proceed further with the acquisition proceedings. Therefore, I am in agreement with the view expressed by K.Govindarajan, J. and I am inclined to hold that much

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orders do not satisfy the requirement as envisaged under Section 4(3)(b) of the said Act. The District Collector should apply his mind independently to the objections and pass detailed order dealing with objections. The provision of Act 31 of 1978 is summary in nature compared to the provision of the Central Act and it is, therefore, incumbent on the part of the authorities to strictly comply with the terms of the Act insteat of adopting the very informal and casual way of dealing with the objections."

15. From the file produced, I fail to see any satisfaction recorded by the District Collector for acquiring the land. Recording satisfaction is a mandatory requirement as held by the Division Bench of this Court in the decision reported in 2005 (2) LW 199 (The District Collector North Arcot Ambedkar District and another v. Manickam). The Full Bench in the decision reported in 2006 (4) CTC 609 (cited supra) in para 42 held as follows,

"42. However, it is necessary to enter a small caveat. The observation made by the Division Bench or the single Judge regarding requirement to indicate reason while passing the order has to be understood in the context of non-application of mind. Even though in a given case the order which is communicated to the land owner does not indicate any reason why the objection has been rejected, if the application of mind is reflected in the file even by way of notings and endorsements, the ultimate decision to acquire the land cannot be said to be vitiated merely because the order which is communicated to the land owner/objector does not contain any detailed reasons. The requirement is that the materials on record, that is to say the relevant file, should indicate application of mind to the relevant facts and circumstances and not passing of a formal reasoned order as is required in judicial or quasi-judicial proceedings. The function obviously being administrative in nature, it is futile to expect furnishing of detailed reasons in the order which is communicated to the person. It is necessary to enter such caveat lest it may be construed that in every case, where the order of rejection communicated to the land owner does not contain the reasons, the proceeding stands vitiated. Ultimately the court is required to find out in each case whether there has been application of mind. Therefore, the brief reasons, which are contemplated, can be given either in the file in the shape of notings, endorsements, etc., or even can be reflected in the order. But, mere non-reflection of reasons in the order communicated or in

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> the notice published in the Gazette, would not be sufficient to hold that there has been non-application of mind and the question as to whether there has been application of mind or non-application is required to be considered on the basis of the return filed and the relevant file to be produced before the Court."

The second respondent is not only required to record his satisfaction but also to record brief reasons to arrive at the said satisfaction. Both the mandatory requirements are found lacking in this case from the perusal of the file. In paragraph 43, the Full Bench held as follows,

> "43. ..... The District Collector is expected to reflect the reasons, but merely because the communication to the land owner does not contain the reasons, the decision of the Collector is not ipso facto vitiated and it would always open to the concerned authority to prove before the Court, if such action of the Collector is challenged, that there has been application of mind and the reasons are available in the relevant records relating to such acquisition. The necessity to record the reasons is applicable where the Collector himself makes the enquiry and also where the Collector takes an appropriate decision on the basis of the report / recommendation made by the authorised officer."

16. The satisfaction to acquire the land after considering the objection should be recorded in writing by the Collector, is considered by this Court in the decision reported in 2004 (3) CTC 261(K.V.Purushothma Naidu v. The District Collector, North Arcot Ambedkar District, Vellore and another). Paragraph 9 of the order is extracted hereunder for proper appreciation.

> "9. In the present case, it is obvious that the notice does not say that the Collector is satisfied. From the mere fact that the words refer to the notice being one under Section 4(1), the Court cannot presume that the Collector was satisfied. When the section mandates that the Collector should be satisfied, then there should be a record of the satisfaction of the Collector. If the notice does not indicate such satisfaction, then at least the records should show that the Collector is indeed satisfied with the recommendations of the Special Tahsildar that the acquisition was necessary."

17. Hence I am satisfied that the impugned acquisition proceeding is vitiated on the ground that Section 4(2) notice was not served on the petitioner in the manner as contemplated under the Act, i.e., without resorting to personally serving the notice on the petitioner or on any adult male member of his family, straight away the Village Administrative Officer affixed the notice on the door of the petitioner's house and no

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date is also mentioned by the Village Administrative Officer to satisfy this Court, on which date the affixture was made. The objection raised by the petitioner on 1.12.1997 is available in the file and the third respondent, without conducting enquiry, recommended to reject the same in a cyclo-styled form and the second respondent also failed to record satisfaction to acquire the land by rejecting the objections made by the petitioner. The inconsistent stand with regard to the filing of the objection by the petitioner is made in counter affidavit in para 4, which is extracted above. The petitioner in his objection dated 1.12.1997 has not given consent to remove the palmairah trees, however, the third respondent states in his report that the petitioner agreed to remove the palmairah trees. Hence it is beyond doubt that in a casual and lethargic manner and in violation of the above referred judgments, the land acquistion proceeding is initiated against the petitioner and therefore the same is liable to be set aside and accordingly set aside.

18. In the result, the writ petition is allowed. No costs. However, it is open to the respondents to issue fresh notice under section 4(2) of the Act and proceed with the acquisition proceeding in accordance with law, if it is warranted.

vr/

Sd/-
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary to Government,
   Adi Dravidar Welfare Department, Chennai - 600 009.

2. The District Collector, Madurai.

3. The Special tahsildar, Adi Dravidar Welfare Alagu-2,
   Madurai-20.

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